

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 GALVESTON DIVISION

4 UNITED STATES OF AMERICA § CASE NO. 3:16-CR-00001-1
5 VERSUS § GALVESTON, TEXAS
6 BENJAMIN DOUGLAS GUIDRY § WEDNESDAY,
§ JUNE 14, 2017
§ 11:27 A.M. TO 12:40 P.M.

7
8 SENTENCING

9 BEFORE THE HONORABLE GEORGE C. HANKS
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES: SEE NEXT PAGE

12 COURT RECORDER: ANDY GOULD

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1 GALVESTON, TEXAS; WEDNESDAY, JUNE 14, 2017; 11:27 A.M.

2 THE COURT: The next case on the Court's Docket is
3 Cause No. 3-16-CR-1, the United States of America versus
4 Mr. Benjamin Douglas Guidry.

5 And, Counsel, please approach.

6 MS. ZACK: Sherri Zack and Charlie Escher, on
7 behalf of the United States, Your Honor.

8 THE COURT: Okay.

9 MR. BUCKLEY: Good morning, Your Honor.
10 Sean Buckley for Mr. Guidry.

11 THE COURT: Welcome, everyone.

12 Mr. Guidry, can you please approach, sir?

13 We also have present the Probation Officer.

14 Can you just introduce yourself for the Record,
15 ma'am?

16 PROBATION OFFICER JONES: Yes. Kimberly Jones for
17 U.S. Probation, Your Honor.

18 THE COURT: Okay. Thanks, Ms. Jones.

19 Mr. Guidry, we're here this morning, sir, for
20 purposes of your sentencing with respect to the charges that
21 were brought against you and that you pled guilty to. In
22 preparation for the sentencing, I have reviewed both the
23 Amended Sentencing Memorandum and the attachments, the
24 Sentencing Memorandum.

25 I've also reviewed the PSI that was prepared, your

1 counsel's objections to the PSI, the Government's statement
2 of no objections to the PSI as well as the pleadings in this
3 case and the information submitted to me by the Probation
4 Office.

5 Is there any other documents or letters other than
6 what's already been filed that you wish the Court to
7 consider in this matter?

8 DEFENDANT GUIDRY: My lawyer filed the letters
9 along with the Sentencing Memorandum.

10 THE COURT: Yes, I --

11 (Counsel confers with Defendant.)

12 THE COURT: I'm sorry.

13 MR. BUCKLEY: Pardon me, Your Honor. I was just
14 informing Mr. Guidry that that was included within the
15 attachments so he would not feel --

16 DEFENDANT GUIDRY: Oh, I'm sorry.

17 THE COURT: I'm sorry. Yes, that's true. I did
18 read all the letters that were attached to the Sentencing
19 Memorandum and your attorney also filed an Amended
20 Sentencing Memorandum with additional information and I've
21 reviewed all of that as well.

22 DEFENDANT GUIDRY: Yes, sir. I'm sorry.

23 THE COURT: Is there anything other than that that
24 the Court -- anything in addition to what you filed already
25 that you wish the Court to consider?

1 MR. BUCKLEY: No, Your Honor.

2 THE COURT: Okay.

3 MR. BUCKLEY: Thank you.

4 THE COURT: Ms. Zack, do you have any witnesses or
5 victims present in the courtroom?

6 MS. ZACK: No, Your Honor.

7 THE COURT: Okay. And are you expecting an
8 evidentiary hearing?

9 MS. ZACK: No, Your Honor.

10 THE COURT: Okay. Mr. Buckley, have you and your
11 client read and discussed the Presentence Report in this
12 case?

13 MR. BUCKLEY: We have, Your Honor.

14 THE COURT: Okay. And have you discussed the
15 objections with him that you made to the PSR?

16 MR. BUCKLEY: Yes, Your Honor.

17 THE COURT: And are you expecting an evidentiary
18 hearing?

19 MR. BUCKLEY: I am not, Your Honor.

20 THE COURT: Okay. And do you have any witnesses
21 present in the courtroom?

22 MR. BUCKLEY: No, Your Honor. And as far as
23 witness testimony is concerned, we would defer to the
24 letters that have been submitted through the Sentencing
25 Memorandum.

1 THE COURT: Okay.

2 (Pause in the proceedings.)

3 THE COURT: I have read the objections to the
4 Presentence Report and I've read the Government's position
5 on those objections as well.

6 Counsel, do you wish to make any argument beyond
7 what is already contained in your objections?

8 MR. BUCKLEY: No argument beyond that. Well, the
9 only argument I would supplement, Your Honor, has to do with
10 the objection to -- and pardon me while I reference the
11 objection please.

12 THE COURT: Oh, sure.

13 MR. BUCKLEY: There is a -- Paragraph 56,
14 Your Honor, applies a four-level enhancement for material
15 that portrays sadistic or masochistic conduct or other
16 depictions of violence, pursuant to 2G2.1(b)(4)(A) and an
17 objection to that has been filed and articulated. The
18 response from Probation was that the nature of the offense
19 conduct itself could be seen to incorporate a violent or
20 sadistic either results or aim and a case was cited, which
21 is *United States versus Lyckman*. I have reviewed the case.

22 And I would also draw the Court's attention to the
23 enhancement -- the previous enhancement, which was made for
24 -- it was a four-point enhancement because the conduct fell
25 under 18, U.S.C., 2241(a), and 2241(a) includes forcible

1 sexual assault. And so my view and the basis for the
2 initial written objection is that to apply the additional
3 four points for sadism and masochism or violence is
4 duplicitous and essentially double-counts, but also that in
5 this particular case and taking into account the rationale
6 expressed by the Fifth Circuit in *U.S. versus Lyckman*, it
7 does not fall within the purview of that additional four-
8 point enhancement.

9 And the Court in *Lyckman* was confronted with a set
10 of facts where the Defendant had -- in the course of
11 producing the pornography, had sexually assaulted by
12 penetrating a 12-year-old old and the Court specifically
13 associated the sadism or violent elements of that
14 enhancement with the fact that this girl was so young. And
15 other cases that the Fifth Circuit has evaluated seem to
16 also flow from the thread articulated in *Lyckman* that the
17 young age of the victim in that case would have necessarily
18 caused the circumstance by that type of abuse that could be
19 or would reasonably be foreseen to be sadistic.

20 In this case -- and again, not in any way to
21 minimize the -- what was done, but the Minor Victim Number 1
22 in this case was a 15-year-old girl. And I don't believe
23 that there's any evidence in the Record that squarely puts
24 Mr. Guidry's actions with respect to that victim squarely
25 within this particular enhancement.

1 THE COURT: Okay. That's a good question.

2 Isn't, with respect to that victim, the video show
3 evidence that she would -- I mean, at least what -- reading
4 the file, that she kept saying, "No, don't do this, stop,"
5 and then Mr. Guidry continued to assault her?

6 MR. BUCKLEY: Yes, Your Honor.

7 THE COURT: I mean, why wouldn't that be sadistic
8 and -- in addition to her age, that information, if true,
9 which is stated in the PSR, qualify for the four-level
10 enhancement?

11 MR. BUCKLEY: My view, Your Honor, my response
12 would be respectfully that anytime you have a forcible
13 sexual assault under 18, U.S.C., 2241 that that type of
14 scenario would seem to encompass universally a situation
15 where the victim was not consenting and may have protested.

16 THE COURT: But wasn't she also drugged at the
17 time?

18 MR. BUCKLEY: There is evidence of that,
19 Your Honor, and we don't dispute that.

20 THE COURT: So she's 15 years' old, she's drugged
21 and she's saying, "No, stop it, don't do this."

22 MR. BUCKLEY: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. BUCKLEY: In no way -- for clarity, in no way
25 am I condoning or minimizing the severity of this. I am

1 only as a technical or advocate attempting to distinguish
2 what I believe the Sentencing Commission intended this to be
3 used for and what I think the factual basis is without in
4 any way suggesting that this is not a serious and disturbing
5 act.

6 THE COURT: Yeah. Ms. Zack?

7 MS. ZACK: Your Honor, as you can tell from the
8 Response submitted by the United States that we do believe
9 this was an act of violence and that the behavior was
10 abhorrent between the drugging her and the sexual assault.

11 THE COURT: Okay.

12 MS. ZACK: I agree with Mr. Buckley though that
13 there is not a case on point that supports that finding for
14 a child as old as the victim in this case. He does get the
15 enhancement for the 2241. And he is also then further
16 enhanced for the -- where is it? The -- continuing the
17 pattern of sexual assault and the repeat and dangerous sex
18 offender under 4B1.5.

19 THE COURT: Okay.

20 MS. ZACK: So even if the Court decided that the
21 sadomasochistic doesn't apply, just for your own
22 edification, where we would be would be -- and I've reviewed
23 this with Probation -- instead of being a Level 43-II, which
24 is life, he would be a level 42-II, which is 360 to life.
25 So Your Honor still has the same ability to sentence up to

1 life, if Your Honor chooses to, but there is then a bottom
2 where there was no bottom in he is a 43.

3 THE COURT: Okay.

4 MS. ZACK: The bottom is life. So I don't know if
5 it would constitute double-counting, but he is certainly
6 being held accountable for behaviors that someone who got
7 the sadomasochistic enhancement isn't always held
8 accountable for. So in a nonproduction setting, you might
9 not have repeat and dangerous sex offender, but you would
10 have sadomasochistic. And that typically applies to very
11 tender age victims, toddlers, very young children, the
12 12-year-old, in the case that Mr. Buckley cited, being
13 penetrated, things like that.

14 So there is no precedent to support it applying to
15 the victim in this case, but there's also no precedent
16 saying it doesn't apply.

17 THE COURT: Okay.

18 MS. ZACK: However, I think there might be a valid
19 double-counting argument with the 2241 as well as the repeat
20 and dangerous sex offender, which those together are not
21 considered double-counting. So for what it's worth, if this
22 one enhancement did not apply and it's really the only one
23 that there's any valid argument to that could go either way,
24 he would be at a 42 with 360 to life because there's no
25 arguing that it's not a 2241 because it is. They've

1 admitted that, they didn't argue against that. It was a
2 drug-facilitated rape. And then he is a repeat and
3 dangerous sex offender under 4B whatever that one is
4 specifically. So all of those certainly squarely apply.
5 This is the only one I think that could go either way.

6 THE COURT: Okay.

7 MS. ZACK: Other than that, I have no other issue
8 with the Guidelines as presented.

9 THE COURT: Okay.

10 MR. BUCKLEY: And if I may, Your Honor?

11 THE COURT: Yes, Mr. Buckley?

12 MR. BUCKLEY: In addition to the particular
13 objection that I've articulated and Ms. Zack has added to,
14 we maintain the objections that were presented in the
15 written Objections, but I do not have any further argument
16 beyond what has been presented.

17 THE COURT: Okay. One second, Counsel.

18 MR. BUCKLEY: Yes, sir.

19 THE COURT: So that's the objection to
20 Paragraph 56? Okay.

21 MR. BUCKLEY: Yes, Your Honor.

22 (Pause in the proceedings.)

23 THE COURT: And, Ms. Zack, with respect to -- I'm
24 just going to go through these -- the objections at
25 Paragraph 38, the factual reference --

1 MS. ZACK: Yes, Your Honor.

2 THE COURT: -- do you have any position on that?

3 MS. ZACK: That is -- okay. Paragraph 38. We
4 responded to that that we believe that those -- all the
5 reports made to law enforcement were credible and that this
6 is what law enforcement put in their Reports. Other than
7 Mr. Guidry saying, "No, that didn't happen," there's nothing
8 to refute that. And both of the individuals that were
9 victimized in the child pornography setting we have not
10 found any reason to find them not credible.

11 THE COURT: Okay.

12 MS. ZACK: I mean, they've been credible. Their
13 reports have been consistent. In fact -- and I will point
14 out to the Court that there was an objection to one of the
15 earlier paragraphs, Paragraph 33 and --

16 THE COURT: Yeah.

17 MS. ZACK: Was it 32?

18 THE COURT: I have 32.

19 MS. ZACK: Yeah, I'm sorry, 32 where Probation
20 mistakenly thought that that fourth video was Minor
21 Victim 1. Minor Victim 1 came in and we went over this with
22 her and her mother. That was not her. And so she certainly
23 had an opportunity, you know, to demonstrate her credibility
24 and we never found any reason to mistrust any of the others.
25 And law enforcement certainly doesn't have any reason to

1 make these details up. This is what they reported. It's
2 for the Court to determine whether you believe it's
3 credible. But regardless of that, Your Honor, it has no
4 bearing on the calculations.

5 THE COURT: All right. Okay. So after hearing
6 argument of parties, with respect to the objections that are
7 filed by the Defendant, the Court rules as follows:

8 With respect to Defendant's objection to Paragraph
9 32, the objection is sustained;

10 With respect to the objections to Paragraph 38,
11 the two objections to Paragraph 38, those are overruled;

12 The objection to Paragraph 40 is overruled;

13 The objection to Paragraph 42 is overruled;

14 The objection to Paragraph 56 with regards to the
15 four-level enhancement for material that portrays sadistic
16 or masochistic conduct or the depiction of violence, that
17 objection is sustained;

18 The objection to Paragraph 61 is overruled;

19 The objection to Paragraph 83 is overruled;

20 The objection to Paragraph 84 is overruled;

21 The objection to Paragraph 85 is overruled;

22 And the objection to Paragraph 121 is overruled.

23 Counsel, does that take care of all the objections
24 that are made?

25 MR. BUCKLEY: Yes, Your Honor.

1 THE COURT: Okay. So subject to the Court's
2 rulings on the specific objections stated on the Record, the
3 PSR is adopted by the Court and will be used for purposes of
4 the Sentencing Hearing.

5 (Pause in the proceedings.)

6 THE COURT: So based on my ruling with respect to
7 sustaining the objection on the sadistic and masochistic
8 conduct, the total offense level I think with be 42.2 and --
9 42, I'm sorry, and the criminal history category remain
10 as II; is that correct?

11 MS. ZACK: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. ZACK: Unless probation calculated it
14 otherwise.

15 PROBATION OFFICER JONES: I did, Your Honor. I
16 calculated it to be 43-II.

17 THE COURT: Okay.

18 PROBATION OFFICER JONES: And I can say on the
19 Record how it changes because when you use the units, it
20 changes a lot.

21 THE COURT: Okay. Can you explain?

22 PROBATION OFFICER JONES: Yes, Your Honor.
23 Paragraph 56 we would disregard it. That would be a zero.

24 Paragraph 61 will become a 40.

25 Paragraph 75 will become 40.

1 Paragraph 76 it remains a 34, but instead of zero
2 units, it would become half unit.

3 Paragraph 78, total number of units would be
4 1-1/2 units.

5 Paragraph 79 would be a 40.

6 Paragraph 80 would be one plus one.

7 Paragraph 81 would become a 41.

8 Paragraph 83 would become a 38.

9 And Paragraph 85 would remain a 43.

10 THE COURT: Okay.

11 MS. ZACK: So my math is wrong, Your Honor,
12 because I did not take into account the shift in units
13 that -- that recalculation so he still is then life at
14 43-II.

15 THE COURT: Okay.

16 (Pause in the proceedings.)

17 THE COURT: So after resolving the objections, I
18 calculate the advisory guideline range as follows:

19 The Defendant's offense level is 43 and the
20 criminal history category is II;

21 This produces -- and please correct me if I'm
22 wrong, Counsel, either side -- with calculation of the
23 guideline provision of 780 months pursuant to USSG Section
24 5G1.2(b);

25 Probation, no eligible;

1 Supervised release, at least five years and up to
2 life;

3 And a fine of 50,000 to \$450,000.

4 Is that correct based on the calculations with
5 respect to my sustaining the objection?

6 MS. ZACK: That's my understanding, Your Honor.

7 THE COURT: And Probation?

8 PROBATION OFFICER JONES: Yes, Your Honor, that's
9 correct.

10 THE COURT: Mr. Buckley?

11 MR. BUCKLEY: That is a correct calculation based
12 on the rulings, Your Honor.

13 THE COURT: Okay.

14 (Pause in the proceedings.)

15 THE COURT: The Court will now consider whether or
16 not to grant departures from the guideline range. I
17 understand that the Defendant does wish a departure and/or a
18 downward variance as authorized in USSG 5K2.13, which is
19 diminished capacity, and 18, U.S.C., Section 3553(a) and
20 (d) (2) (A) (ii).

21 Is that correct?

22 MR. BUCKLEY: Well, pardon me, Your Honor. In the
23 Amended Sentencing Memorandum, as a matter of the technical
24 aspects of a departure and variances, we withdrew the
25 request for the departure under the diminished capacity

1 provision, but I do continue to assert and I'd like to argue
2 the request for a downward variance when the Court is ready.

3 THE COURT: Okay. That will be fine. I forgot, I
4 apologize. In your Amended Memorandum, you did withdraw
5 that request.

6 I'd like to hear your argument with regards to a
7 downward departure and/or a variance in this matter.

8 MR. BUCKLEY: Thank you, Your Honor. This case is
9 a tragic paradox in many ways. Mr. Guidry, from his
10 childhood into his adulthood as referenced in the Sentencing
11 Record and in the materials, the support letters provided by
12 his mother particularly giving some insight into his long-
13 standing desire and need to be accepted and well-liked and
14 to get approval and admiration from the people that are
15 around him and particularly with the person who he
16 considered his best friend in the world growing up and into
17 adulthood, his father. And the tragic paradox coming out of
18 that was that now he has alienated and disappointed and let
19 down and, in some cases, abused the people that he sought
20 this admiration from and has gone from someone who is worthy
21 of their admiration to someone who many people see as a
22 pariah for the acts that he's committed.

23 And perhaps most tragically as to his relationship
24 with his best friend, his father, his father has cut off
25 communication with him. His father no longer speaks to

1 Ben Guidry as a result of his anger over Mr. Guidry's
2 offense conduct. That is a -- perhaps the -- other than the
3 confinement, the most severe punishment that could be levied
4 upon Mr. Guidry for the acts that he's committed.

5 Mr. Guidry secondly has clearly and unequivocally
6 accepted responsibility for his conduct. In his statement
7 to the Court, which is reflected in the PSI, he has stated
8 that notwithstanding his struggles with mental illness and
9 the difficulties as they've arisen in his life that he does
10 not blame any of his conduct, any of his offense conduct on
11 those mental health issues. He notes that in the past, he
12 readily did so but that at this time, he clearly and without
13 question accepts responsibility before this Court. I don't
14 disagree with Mr. Guidry, I think that he needed to accept
15 responsibility to this Court and to the victims.

16 I do however think that my job as an advocate
17 calls upon me to argue to the Court when I think that there
18 is an aspect of the case that is severely mitigating even
19 though Mr. Guidry himself may not adopt it as he presents
20 himself to Your Honor. It appears clear to me from the
21 Sentencing Record and particularly the medical information
22 we have from both the FDC in Houston, the Galveston County
23 Jail, from the medical records that were submitted as a
24 supplement to this Sentencing Memorandum and as the -- to
25 the information provided by Mr. Guidry's mother in her

1 letter, that Mr. Guidry has, since the time of his
2 childhood, suffered from bona fide mental health problems.
3 And later in life those have manifested themselves in lack
4 of impulse control, problems with empathy, problems with
5 judgment and various other things. I suspect that if over
6 time the layers of the onion were peeled back, that there
7 would be a complex set of issues under there that we may not
8 even know or fully understand at this time.

9 But he has admittedly when force to do so and
10 confronted with some of these realities from what he has
11 caused, he has sought out a heightened level of treatment
12 for these problems that he should have sought out a long
13 time ago. There's no doubt about that. He should have
14 sought this out as soon as these conditions and symptoms
15 manifested.

16 I think though that there is little doubt and
17 certainly I don't believe that there's evidence in his
18 history or in the Sentencing Record that he was committing
19 this type of offense conduct while he was treated and
20 properly medicated. Again, that is not in any way an excuse
21 for the conduct itself, but it does I think shed light into
22 the connection of conduct to someone's true essence and
23 their true being.

24 And would he have committed this conduct had he
25 been medicated? I don't believe so. Of course I don't

1 know. I'm not a psychiatric professional, but I base that
2 on several factors. I think that there is a distinct and
3 noticeable paradox between the Ben Guidry that his parents,
4 his family and his supporters, some of whom are here today,
5 have seen and who continue to embrace and care about and the
6 Ben Guidry who committed the offense conduct that is before
7 the Court, which cannot be sugarcoated in any sense. It's
8 disturbing.

9 There is also -- quite frankly, the qualities of
10 the conduct itself are bizarre. The tax case, for example.
11 No one in their right mind could think that this is a
12 rationale scheme that would avoid detection. It is
13 something that was destined to fail from the get-go and it
14 just is one example of how this was someone who was not in
15 control of his decision-making, not in control of his
16 reflection at the time.

17 And finally, with regard to Mr. Guidry's true
18 essence and the feelings that he has while he is medicated
19 and while he is able to reflect, I have had the interaction
20 with Mr. Guidry since 2015 in this case, fairly regular
21 interaction, and I've seen -- I realize I'm not testifying,
22 but I may as I hope the Court will accept my proffer of my
23 reflection. I have seen distinct changes in Mr. Guidry's
24 ability to reflect and the other qualities that would be
25 relevant to his offense conduct and to his character during

1 the times that he's been successfully medicated versus the
2 times that he has not been. And so I do see that there is a
3 remarkable difference in who he is when he is properly
4 medicated and that is another paradox or tragedy present in
5 this case.

6 I would also, without belaboring that any further,
7 draw the Court's attention again -- and I think the Court is
8 aware -- just the distinction between the acts relating to
9 Minor Victim 1 and the acts relating to Minor Victim 2. And
10 Minor Victim 1, as the Court knows, was a completed act of
11 sexual assault and production of child pornography. As to
12 Minor Victim 1, there was no physical abuse other than
13 the -- it is abuse -- the abuse of surreptitiously
14 videotaping her in a bathroom setting for voyeuristic
15 purposes, which I think was an attempted production, and
16 that's the way that we've accepted responsibility with
17 regard to that again not to minimize the impact of that
18 conduct, but simply to draw the distinction for the Court.

19 Naturally, Your Honor's concern and your
20 sentencing is to weigh the factors of 3553(a) particularly
21 your need to protect the community against future
22 dangerousness of any defendant and in this case particularly
23 Mr. Guidry.

24 I would respectfully argue to the Court that a
25 life term of supervised release following the term of

1 Mr. Guidry's incarceration can accomplish the goals of
2 ensuring that Mr. Guidry is compliant with his medication
3 and including instrumentality such as electronic GPS
4 monitoring and other things that would be within the purview
5 of the Probation Department to assess that could adequately
6 protect the community while also taking into account the
7 mitigating reality that this is someone who has a bona fide
8 mental illness.

9 And as unpleasant as the conduct was, there does
10 seem to be an argument and a basis for believing that he
11 would not have committed this conduct had he been in his
12 right mind.

13 And with that framework, Your Honor, we do request
14 that the Court, in Your Honor's discretion, issue a downward
15 variance and/or a sentencing at the low end.

16 THE COURT: Okay. Counsel?

17 MS. ZACK: With all due respect to Mr. Buckley and
18 to individuals who mental illness, I don't think his mental
19 illness had anything to do with this. I think that there
20 are two types of people, good people and bad people. And
21 there are plenty of good people with mental illness that do
22 not commit tax fraud, that do not drug and rape minors for
23 their own sexual satisfaction, that don't set up
24 serendipitous bathroom cameras to capture the other victim's
25 best friend going to the bathroom or disrobing to shower.

1 He has daddy issues so we should cut him a break.
2 You know what? A lot of people have a lot of problems with
3 their family and a lot of people deal with those problems
4 every day without becoming a train wreck that society now
5 has to deal with. And he -- I believe it is very telling
6 that he didn't seek any help until the IRS came knocking on
7 his door to look at his records.

8 And I don't think his mental illness caused him to
9 commit an unsophisticated tax crime. There are plenty of
10 people that aren't mentally ill that rob banks, really
11 poorly they rob banks in very unsophisticated ways so the
12 fact that he wasn't smart enough to come up with a better
13 scam and that the IRS caught him has nothing to do with
14 mental illness. It has to do with the fact that he's a liar
15 and a thief and he would do anything he could to make money
16 in an illegitimate way because he is not a good person.

17 He was -- we know he was cheating on his wife and
18 these are not -- that's not mental illness. He took a woman
19 that he was not married to into his bedroom, his master
20 bedroom, had sex with her and recorded it. That's not
21 mental illness. That's machismo. That's "I am the man. I
22 am powerful. I will do whatever I want." Rape is a crime
23 of violence.

24 What he did to this child was horrific. He has
25 altered her life irrevocably. There is -- she can never

1 erase what he did to her. She will have trust issues, she
2 will have all sorts of issues because decided that he could
3 give her some drugs and sexually take advantage of her and
4 then film like that the -- adding insult to injury.

5 The actions that he took were not because he is
6 mentally ill and maybe that made it easier for him. Maybe
7 he does have some impulse control, but he had plenty of
8 opportunities not to do this. He had the ability to earn a
9 living. Everybody has the ability to not have sex with
10 children, but he didn't do that. He chose to do whatever he
11 could, whenever he wanted. Why? Because he wanted to.

12 And I feel bad for his family because as a parent,
13 I know you love unconditionally and you don't get to pick
14 the personality of your child. You are who you are, good,
15 bad, whatever it may be. And unfortunately in this case,
16 he's bad. And the only way to protect society is to make
17 sure that he is not part of society and all -- I mean, there
18 isn't an enhancement that didn't apply to him.

19 Each decision he made he absolutely knew it was
20 wrong. There's no way not to know it's wrong. And whether
21 you're mentally ill or not, you know you're not supposed to
22 drug a 15-year-old and have sex with her. And it wasn't one
23 time. This went from when she was 14 through to when she
24 was 16. It was a pattern.

25 At some point, did he have an epiphany while this

1 was going on that, "Hey, maybe I shouldn't be doing this"?
2 No. That epiphany didn't show up until he decided he needed
3 treatment when the IRS came knocking on his door and maybe
4 he figured out, "Oh, God! They took my computers and I know
5 what's on those computers and I know what's on my phone and
6 it's really bad so I better get some help now so it looks
7 better when I show up at sentencing."

8 And that's not to diminish the fact that he does
9 have a legitimate mental illness, but it's no different than
10 any other illness. Whether you choose to seek treatment for
11 cancer or not is your choice. He chose not to until he
12 needed to. You know, people refuse treatment all the time
13 for things other than mental illness. You have non-
14 compliant diabetes.

15 If they go and rob a bank, are they going to say,
16 "It was because I didn't take my insulin"? That's their
17 choice. He had freewill and he had free choice and he used
18 his freewill to violate everybody's trust not only in his
19 business dealings, in his personal dealings in every way,
20 shape and form imaginable.

21 And what we're asking you to do, Your Honor, is to
22 make him take responsibility for what he did, to sentence
23 him pursuant to way the Guidelines are calculated and to
24 prevent him from having the ability to ever interact with
25 society again and spare society the danger of his being a

1 part of it.

2 THE COURT: Thank you, Ms. Zack.

3 We talked about both the downward departure and
4 variance at the same time so let me just -- before I make a
5 ruling on the request for variance, let me state that after
6 calculating the Guidelines and departures and hearing
7 argument, I must now consider the relevant factors set out
8 by Congress at 18, U.S.C., Section 3553(a) and ensure that I
9 impose a sentence that is "sufficient but not greater than
10 necessary to comply with the purposes of the sentencing."

11 The purposes include the need for the sentence to
12 reflect the seriousness of the crime, to promote respect for
13 the law and to provide just punishment for the offense.
14 This sentence should also deter criminal conduct, protect
15 the public from future crime by the Defendant and promote
16 rehabilitation.

17 In addition to the Guidelines and Policy
18 Statements, I must consider the nature and circumstances of
19 the offense, the history and characteristics of the
20 Defendant, the need to avoid unwarranted sentencing
21 disparities among similarly-situated defendants and the
22 types of sentences available.

23 In light of the arguments that were just presented
24 to me with respect to sentencing, I will consider those
25 arguments and incorporate my thoughts to those arguments in

1 the sentencing in this case.

2 Mr. Guidry, before the Court issues a sentence in
3 this case, you have a right to make a statement or present
4 any information that you wish to mitigate the sentence.

5 Do you wish to make a statement at this time?

6 DEFENDANT GUIDRY: Yes, Your Honor.

7 THE COURT: Please proceed.

8 DEFENDANT GUIDRY: Yes, Your Honor. I have
9 nothing but regret and remorse for the decisions I made.
10 I've hurt those people that I care about the most in doing
11 what I've done. And my family that's behind me in the -- my
12 ex-wife and my stepdaughter, I hurt them and I'm sorry for
13 having hurt them. I hate myself every day for this. I cry
14 every day. I cry because I feel bad for what I've done. I
15 just want one more chance and I pray that you have mercy on
16 me. I have an eight-year-old daughter that I pray that I
17 get to see her grow up.

18 I'm sorry for crying, Your Honor, but this is me
19 every day. Every day I cry. I'm so sorry, so sorry. I'm
20 sorry. I'm so sorry for what I've done.

21 MR. BUCKLEY: Thank you, Your Honor.

22 THE COURT: Before the Court issues a sentence,
23 I'd like to ask both the Prosecution and the Defense for
24 a -- if you have a sentencing recommendation?

25 Ms. Zack?

1 MS. ZACK: Your Honor, I would ask that you
2 sentence within the Guidelines as calculated and it's my
3 understanding, based on the way the Guidelines are
4 calculated, that the Defendant should get as to Count One,
5 360 months; as to Count Two, 360 months; and as to Count
6 Three, 60 months all to run consecutively for a total of
7 780 months.

8 THE COURT: And --

9 MR. BUCKLEY: It's my argument to the Court,
10 Your Honor, that a sentence in excess of 200 months combined
11 would be greater than necessary under the particular facts
12 and the mitigating facts of this case to satisfy the
13 directives of 18, U.S.C., 3553(a).

14 Thank you, Your Honor.

15 THE COURT: Okay. Counsel, I'm just going to take
16 just a brief recess no more than about three minutes and
17 I'll be right back with my sentence.

18 MS. ZACK: Thank you, Your Honor.

19 (Recess taken from 12:09 p.m. to 12:27 p.m.)

20 THE COURT: If the parties can please approach?

21 (Pause in the proceedings.)

22 THE COURT: At this time, the Court is ready to
23 announce a sentence in this case.

24 Mr. Guidry, I've reviewed this file very
25 carefully, I've looked at all the letters that have been

1 submitted on your behalf and I have thought through what was
2 said in them and your situation very, very carefully. And
3 with all due respect, sir, what you did was absolutely
4 horrific. You -- and it pains me to say this, but you're
5 the worst kind of predator. You're someone who solicited
6 the trust, the response, the admiration of the victims, and
7 then you turned around and used that respect and trust for
8 your own self-gratification. You manipulated them to do
9 what you wanted them to do for no other reason as because it
10 made you happy.

11 And these children trusted you. They placed
12 everything that they had in your hands and you completely
13 abused that trust. And what bothers me is that if you're
14 willing to do this to people, to young kids that you know
15 and supposedly love and as an adult and as a parent care
16 for, I shudder to think what you could do to people and
17 victims that you don't know.

18 Now, I have read the letters from your family
19 members who love -- and it's obvious that they love you
20 very, very much, but it's also obvious from reading these
21 letters that you've manipulated them just like you
22 manipulated these young victims. You have manipulated them
23 into thinking that you are somebody that you clearly are
24 not.

25 And I am very sympathetic to your situation, I'm

1 sympathetic to your family's feelings and I have an
2 obligation to you and your family members as fellow citizens
3 to be fair and just, but I also have an obligation to the
4 victims who can't speak for themselves, the victims who
5 don't have people here supporting them, who don't have
6 letters that I can read about how this will affect their
7 lives or what your conduct could do to them or has done to
8 them. And it's that obligation, sir, that I have to those
9 victims that requires the sentence that I'm going to impose
10 in this case this morning.

11 Pursuant to the Sentencing Reform Act of 1984,
12 it's the judgment of this Court that the Defendant,
13 Benjamin Douglas Guidry, is hereby committed to the custody
14 of the Bureau of Prisons to be imprisoned for a term of
15 270 months as to each Counts One-S and Two-S, and 60 months
16 as to Count Three-S all to be served consecutively.

17 Upon release from imprisonment, the Defendant
18 shall be placed on supervised release for a term of life.
19 The term of life as to each of Counts One-S and Two-S and
20 three years as to Count Three-S all to run concurrently.

21 Within 72 hours from the release from Bureau of
22 Prisons, the Defendant shall report in person to the
23 probation office in which the District to which the
24 Defendant is released.

25 While on supervised release, the Defendant shall

1 not commit another federal, state or local crime, shall
2 comply with the standard conditions that have been adopted
3 by this Court under General Order Number 2017-1, abide by
4 any mandatory conditions required by law and shall comply
5 with the following additional conditions:

6 You must cooperate in the collection of DNA as
7 directed by the Probation Officer;

8 You must not own, possess or have access to a
9 firearm, ammunition, destructive device or other dangerous
10 weapon, i.e., anything that was designed or modified for the
11 specific purpose of causing bodily injury or death to
12 another person such as nunchucks or Tasers;

13 You shall report the address where you will reside
14 and any subsequent change of address to the Probation
15 Officer responsible for supervision and you shall register
16 with the Sex Offender Registration Agency in any state where
17 you reside, are employed, carry on a vacation, or is a
18 student as directed by the Probation Officer;

19 The Probation Officer will provide the State
20 officials with any and all information required by the State
21 Sex Offender Registration Agency and may direct you to
22 report to that agency personally for additional processing
23 such as photographing and fingerprinting;

24 You shall participate in a mental health treatment
25 program and/or a sex offender treatment program provided by

1 a registered sex offender treatment provider as provided
2 by the United States Probation Officer which may include,
3 but not limited to, group and/or individual counseling
4 sessions, able screen, polygraph testing and/or a psycho
5 psychological -- or physiological testing to assist in the
6 treatment and case monitoring administered by the sex
7 offender contractor or their designee;

8 Further, you shall participate as instructed and
9 shall abide by all policies and procedures of the sex
10 offender program until such time as you're released from the
11 program as approved by the United States Probation Officer;

12 You will incur costs associated with such sex
13 offender treatment program and testing based on your ability
14 to pay as determined by the United States Probation Officer;

15 You shall waive your right of confidentiality and
16 any records for mental health treatment imposed as a
17 consequence of this judgment to allow the supervising United
18 States Probation Officer to review your course of treatment
19 and progress with the treatment provider;

20 The Court authorizes the release of the
21 Presentence Report and available mental health evaluations
22 to the mental health provider as approved by the Probation
23 Officer;

24 You shall not date or cohabitate with anyone who
25 has children under the age of 18 unless approved in advance

1 in writing by the United States Probation Officer;

2 You shall not have any contact with the victims or
3 victims' families including letters, communication devices,
4 audio/visual devices, visits or any contact through a third
5 party without prior written consent of the United States
6 Probation Officer;

7 You must participate in a mental health treatment
8 program and follow the rules and regulations of that
9 program;

10 The Probation Officer, in consultation with the
11 treatment provider, will supervise your participation in the
12 program including the provider, location, modality, duration
13 and intensive. You must pay the cost of the program if
14 you're financially able;

15 You must take all mental health medications that
16 are prescribed to you by a treating physician and you must
17 pay the cost of that medication if you're able.

18 Pursuant to 18, U.S.C., Section 3664(d)(5), if a
19 victim's losses are not ascertainable by the date that is
20 10 days prior to sentencing, the attorney for the Government
21 or the Probation Officer shall so inform the Court and the
22 Court shall set a date for a final determination of the
23 victim's losses not to exceed 90 days after sentencing.
24 Such order may be granted only upon a showing of good cause
25 for the failure to include such losses in the initial claim

1 for restitutionary relief.

2 It is further ordered that the Defendant pay
3 restitution in the amount of \$201,454. That's \$158,454 for
4 the fraudulent refunds and \$34,000 for the employment tax
5 liabilities for 2013, 2014 and 2015 of the Pool Scrubbers,
6 LLC, and of Robert Matthew Clark to the Internal Revenue
7 Service payable to the following address: IRS-RACS,
8 Attention Mail Stop 6261 Restitution, 333 West Pershing
9 Avenue, Kansas City, Missouri 64108; and \$8,000 to
10 Robert Matthew Clark paying to the following address:
11 301 Lancaster Lane, League City, Texas 77573.

12 It is further ordered that the Defendant shall pay
13 the United States a special assessment of \$300.

14 The Court finds that Mr. Guidry does not have the
15 ability to pay a fine and the Court will waive a fine in
16 this case.

17 Having assessed the Defendant's ability to pay the
18 payment of the total criminal monetary penalties shall be
19 due as follows:

20 The Defendant shall make a lump sum payment of
21 \$5,300 due immediately;

22 The balance due in 50 percent of any wages earned
23 while in prison in accordance with the Bureau of Prisons
24 Inmate Financial Responsibility Program;

25 Any balance remaining after the release from

1 imprisonment shall be due in monthly installments of \$100 to
2 commence 60 days after the release from imprisonment to a
3 term of supervision;

4 Payment is to be made through the United States
5 District Clerk, Southern District of Texas.

6 MS. ZACK: Your Honor, there appears to be -- I
7 believe that you misstated the 35 -- it should have been
8 35,000 for employment tax liabilities, not 34.

9 MR. ESCHER: For Pool Scrubbers and --

10 THE COURT: Oh, I'm sorry, I thought it said 35, I
11 apologize.

12 MS. ZACK: Right. I just wanted to make --

13 THE COURT: Thirty-five thousand.

14 MS. ZACK: -- clear on the Record. I believe the
15 final calculation though of the \$201,454 is correct.

16 Is that right?

17 MR. ESCHER: Yeah.

18 MS. ZACK: Okay. Please double-check.

19 THE COURT: And includes \$158,454 of fraudulent
20 refunds and \$34,000 --

21 MS. ZACK: Thirty -- yeah.

22 THE COURT: Sorry, \$35,000 for employment tax
23 liabilities for 2013, 2014 and 2015 by the Pool Scrubbers,
24 LLC, and of Robert Matthew Clark.

25 MR. ESCHER: Thank you.

1 MS. ZACK: Thank you, Your Honor.

2 THE COURT: Is there anything further from the
3 Government in this matter?

4 MS. ZACK: No, Your Honor.

5 THE COURT: Mr. Buckley, is there anything further
6 on behalf of your client?

7 MR. BUCKLEY: Thank you, Your Honor. We would
8 respectfully request that Mr. Guidry -- or if the Court
9 would recommend to the Bureau of Prisons that he be
10 designated an FCI Bastrop.

11 THE COURT: I will do so.

12 MR. BUCKLEY: Thank you.

13 THE COURT: Of course, Mr. Guidry, it's not -- the
14 Bureau of Prisons does not have to follow my recommendation,
15 but I will recommend that you be in Bastrop so that you'll
16 at least be near to your family.

17 DEFENDANT GUIDRY: Thank you, Your Honor.

18 THE COURT: You have the right to appeal my
19 sentence.

20 I'm providing you with a written notice of your
21 right to appeal and if you could sign that just
22 acknowledging that you're aware of the right to appeal in
23 this case.

24 (Defendant and counsel sign notice.)

25 THE COURT: Okay. The Record will reflect that

1 the Notice of Appeal has been signed.

2 Anything further from the parties?

3 MS. ZACK: Not in this matter, Your Honor, no.

4 MR. BUCKLEY: Nothing from us, Your Honor.

5 THE COURT: Mr. Guidry, good luck to you, sir.

6 DEFENDANT GUIDRY: Thank you.

7 THE COURT: And you may be excused.

8 PROBATION OFFICER JONES: Your Honor, can I ask
9 you a question?

10 THE COURT: Sure. Okay. There's nobody here on
11 that side.

12 MS. ZACK: Oh, I'll go with you.

13 PROBATION OFFICER JONES: Yeah. Is the total
14 sentence 600 months; is that the total sentence?

15 THE COURT: 270, 270 and 60, yes, 600.

16 PROBATION OFFICER JONES: Yes. And is that a
17 variance based on 18 U.S.C. 3553(a)?

18 THE COURT: Yes, it is.

19 PROBATION OFFICER JONES: Okay. Thank you,
20 Your Honor.

21 (These proceedings concluded at 12:40 p.m.)

22 * * * * *

23 *I certify that the foregoing is a correct*
24 *transcript to the best of my ability produced from the*
25 *electronic sound recording of the proceedings in the above-*

1 entitled matter.

2 /S/ MARY D. HENRY

3 CERTIFIED BY THE AMERICAN ASSOCIATION OF

4 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**D-337

5 JUDICIAL TRANSCRIBERS OF TEXAS, LLC

6 JTT TRANSCRIPT #57121

7 DATE: AUGUST 13, 2017

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